

5/5/98

TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM

CHAPTER 6

ENFORCEMENT PROGRAM DESCRIPTION

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TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM

CHAPTER 6

ENFORCEMENT PROGRAM DESCRIPTION

GENERAL DISCUSSION

The Texas Natural Resource Conservation Commission (“Commission”) has the primary responsibility for taking the necessary enforcement action to correct environmental violations affecting human health and the State’s water quality. The Commission is responsible for compliance monitoring and enforcement of the National Pollutant Discharge Elimination System (NPDES) domestic and industrial wastewater program, sewage sludge program, pretreatment program, biomonitoring program (whole effluent toxicity testing), and Concentrated Animal Feeding Operations (CAFO) program.

EPA shall retain jurisdiction over all large and medium municipal separate storm sewer system (MS4) permits which it has issued. Retention of jurisdiction over the permits shall include the conduction of inspections and the receipt and review of any self-monitoring reports, compliance evaluation and enforcement actions. Prior to expiration of each of these MS4 permits, the TNRCC shall initiate processing of any renewal application it receives. Transfer of jurisdiction over each of these permits will occur at the time of issuance of a renewed TPDES MS4 permit, including the conduction of inspections, the receipt and review of any self-monitoring reports, and compliance evaluation and enforcement actions.

EPA shall also retain jurisdiction over all storm water general permits which it has issued. Retention of jurisdiction over the permit shall include the conduction of inspections, and the receipt and review of any self-monitoring reports, compliance evaluation and enforcement activities. Prior to expiration of each of these general permits, the TNRCC shall initiate processing of renewals of these general permits. Transfer of

jurisdiction over each of these general permits will occur at the time of issuance of a renewed TPDES general permit, including the conduction of inspections, and the receipt and review of any self-monitoring reports, and compliance evaluation and enforcement activities. TNRCC may exclude certain categories authorized to discharge under a general permit from coverage under a TPDES-issued general permit (making the general permit less broad in coverage). In such an instance, TNRCC would authorize the remaining discharges of storm water by individual permit.

After program assumption TNRCC will assume and administer the Region 6 CAFO general permit, and may amend this general permit to include some provisions more stringent than the Region 6 permit provisions. TNRCC will authorize CAFOs under a permit by rule or general permit that meets TPDES program requirements, as described in Section III.C.3 of the Memorandum of Agreement. Authorizations by rule and general permits issued under TPDES will be subject to EPA review, in accordance with Section IV.C. of the Memorandum of Agreement. Additionally, EPA will transmit copies to the TNRCC of any notices of intent it receives or other related information such as correspondence from EPA which requires an individual permit or excludes a person from coverage under the general permit.

Senate Bill (S.B.) 1660, effective September 1, 1995, added several sections to the administrative penalty section of the Texas Water Quality Control Act, the Texas Solid Waste Disposal Act and the Texas Clean Air Act. This new law affects the Commission's enforcement program significantly. Generally, the statute states that the Commission is not required to make findings of fact and conclusions of law in an enforcement action, other than those which give the agency jurisdiction. The law also allows Administrative Orders (AOs) entered by the Commission to contain some or all of the following provisions: the order is not an admission of a violation, the occurrence of the violation is in dispute, the order is not intended to become a part of a party's compliance history; and all orders are explicitly made inadmissible in third party litigation.

S.B. 1660 enables the Commission to streamline its enforcement process thus allowing the Commission staff to concentrate on enforcement actions deserving the highest level of attention. Industrial and municipal entities will benefit from the streamlining and predictability the statute contemplates. Most important, the environment will benefit from the swift resolution of appropriate enforcement matters by expediting the implementation of technical recommendations and remedial actions.

The Texas Environmental, Health, and Safety Audit Privilege Act (“Audit Act”) was adopted by the 74th Legislature and became effective on May 23, 1995. The Audit Act was subsequently amended by House bill 3459, 75th Legislature, effective September 1, 1997. Texas is one of twenty-four states that have enacted legislation providing some form of voluntary environmental audit privilege and/or immunity. The Texas statute primarily affects litigation between non-TNRCC parties. However, Commission enforcement and regional inspection programs have also been affected, and a process is in place to implement the legislation. The Audit Act was proposed to encourage voluntary compliance with health and safety and environmental laws by granting a limited evidentiary privilege and penalty immunity, to entities that voluntarily seek to determine the environmental, health, and safety compliance status of their facilities. Certain violations discovered through a scheduled audit and promptly disclosed to the Commission are eligible for immunity from administrative penalty assessments, subject to the numerous conditions in the Audit Act. Commission enforcement authority regarding disclosed violations remains otherwise unaltered. Criminal violations, violations that have resulted in injury or substantial risk of injury, and violations that have resulted in an economic benefit resulting in a competitive advantage are not eligible for penalty immunity.

The adopted legislation provides an evidentiary privilege for certain information generated through a voluntary environmental audit and contained in an audit report with the following exceptions:

- Waiver - the privilege does not apply to the extent the privilege is expressly waived.
- Disclosure required by court or administrative hearings official - a court or administrative hearings official with competent jurisdiction may require disclosure of a portion of an audit report in a civil or administrative proceeding if the court determines

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- Nonprivileged materials - the privilege does not apply to: a document, communication, datum, or report or other information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental or health and safety law; information obtained by observation, sampling, or monitoring by a regulatory agency; or information obtained from a source not involved in the preparation of the audit report. A regulatory agency may review information that is otherwise required to be available to it under federal law but this review does not waive the administrative or civil privilege.

In addition, the Audit Act provides immunity from administrative penalties for the violations disclosed as the

result of a voluntary environmental audit. As conditions to immunity, the Audit Act requires the disclosing entity to promptly disclose the violations, to correct the violations within a reasonable time, and to cooperate with the Commission through all stages of the investigation of the violations. The immunity does not apply to all violations; for example, if the violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors, the immunity does not apply. Other exceptions apply as follows:

- If the person making the disclosure intentionally or knowingly committed or was responsible for the disclosed violation;
- If the person making the disclosure recklessly committed or was responsible for the violation and the violation resulted in substantial injury to one or more persons at the site or off-site harm to persons, property, or the environment;
- If the offense was committed intentionally or knowingly by a member of the person's management or an agent of the person and the person's policies or lack of prevention systems contributed materially to the occurrence of the violation;
- If the offense was committed recklessly by a member of the person's management or an agent of the person, the person's policies or lack of prevention systems contributed materially to the occurrence of the violation, and the violation resulted in substantial injury to one or more persons at the site or off-site harm to person, property, or the environment; or
- If the entity has repeatedly or continuously committed significant violations and not attempted to achieve compliance, so as to constitute a pattern of disregard of environmental, health and safety regulations.

Furthermore, immunity does not apply if an investigation of the violation was initiated or the violation was independently detected before the entity disclosed the violation, thus preserving the Commission's independent

inspection and enforcement authority.

There are two types of notice contemplated by the law - the notice a facility gives to the Commission when it plans to perform an audit and the notice or disclosure made by the facility when it discovers a violation as a direct result of the audit. Both of these notices are public documents. An entity which undertakes an environmental audit is not required to provide the Commission with notice in order for audit information to become privileged; however, in order to take advantage of the immunity offered by the audit privilege, the entity must give notice of its intent to commence an environmental audit. A written disclosure must be submitted promptly upon discovery of the violation and must be sent via certified mail.

As stated previously, the Commission has encountered only a slight to moderate effect from implementation of the Audit Act. The Commission has established an Environmental Audit Task Force to process the notices received pursuant to the Audit Act; to follow up on the correction of disclosed violations; and to coordinate all appropriate enforcement actions.

A written disclosure of violation is a pre-condition to immunity and initiates the enforcement process. Except for the possible penalty immunity for a violation identified under the audit, the enforcement process will not be altered. The immunity does not extend to injunctive relief or compliance or technical recommendations that may be contained in any enforcement action developed pursuant to violations identified at the facility.

Field operations have been impacted slightly by the presence of the evidentiary privilege for information contained in an audit report. The Commission will not routinely receive or review privileged audit reports. Inspectors have been cautioned not to request access to privileged audit information. If the review of privileged audit report information is necessary to determine compliance status, that information and information derived

from its use will remain privileged and inadmissible in administrative or civil proceedings. The review will occur under the terms of a confidentiality agreement between the Commission and the auditing entity, where appropriate.

Finally, the environmental audit statute does not apply to EPA inspectors operating in Texas; however, the operation and administration of a federally delegated program (such as TPDES) is subject to and must conform with the conditions and requirements contained in the Audit Act.

Senate Bill 1876 ("SB 1876") which consolidates enforcement powers of the TNRCC, effective September 1, 1997, adds Section 7.052 to the Texas Water Code and authorizes a maximum administrative penalty for water quality violations at \$10,000 per day per violation and a maximum civil penalty of \$25,000 per day per violation. Administrative penalties will be computed and assessed in accordance with the TNRCC Penalty Policy, effective October 1, 1997. A copy of the policy is included in the Enforcement Guidelines (Appendix 6-A, Part VI).

Senate Bill 1876 also adds Section 7.075 to the Texas Water Code to allow for written public comment on draft AOs. Notice of the opportunity to comment will be published in the Texas Register no later than the 30th day before the date on which the public comment period closes. Therefore, publication and the 30-day comment period will take place after the AO is settled and signed by the alleged violator but prior to the Commission's agenda. Enforcement staff will promptly consider any written comments and may withdraw or withhold consent to the proposed AO or agreement if comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code, Commission rules, or a Commission order or permit.

The Commission's enforcement components are located in both the Central Office and the Regional Offices. The Field Operations Division (FOD) coordinates activity across the State through Regional Offices. Surveillance activities are conducted by inspectors located in those offices. They are responsible for conducting site visits for compliance inspections and complaint investigations. Most violations noted during inspections are resolved through informal enforcement efforts at the Regional Office level. However, if significantly noncompliant (SNC) violations or other serious and/or continuing violations are identified during an inspection, the Regional Office will initiate formal enforcement action.

The enforcement program is coordinated between Enforcement Team I (the Water Quality Team) and the Database and Administration Team of the Water & Multimedia Section in the Enforcement Division, the Pretreatment Team in the Water Quality Division, the Sludge and Transporter Review Team of the Water Quality Division, the Toxicity Evaluation Team of the Water Quality Division, the Litigation Support Division, and the Regional Offices. Water Quality Team staff provide the administrative and technical actions necessary to identify alleged violations of the Texas Water Code, the Texas Health and Safety Code and Title 30 Texas Administrative Code (TAC).

The Water Quality Team also reviews compliance inspection reports submitted by the Regional Offices for facilities under Central Office enforcement action and monitors permittee progress in meeting compliance deadlines as required by AOs. An AO cannot be terminated until the alleged violator is compliant with the terms and requirements of the AO.

Regional Offices provide technical support for formal enforcement cases. Field staff conduct inspections to develop enforcement documentation, provide recommendations for corrective action requirements, participate in screening Regional Office referrals for the initiation of formal enforcement and review draft enforcement

documents.

The Database and Administration Team of the Enforcement Division will update and maintain all Water Enforcement National Database (WENDB) data elements in the Permit Compliance System (PCS) and the Commission's Texas Regulatory Activity and Compliance System (TRACS) database which contains information about all permitted effluent limitation requirements, biomonitoring for Whole Effluent Toxicity (WET) limits, pretreatment requirements, storm water requirements, and sewage sludge requirements for permits issued by the Commission. The Database and Administration Team is responsible for implementing Quality Assurance/Quality Control procedures for entering and monitoring reliable and consistent data in PCS.

The Database and Administration Team also supplies Discharge Monitoring Report (DMR, EPA Form 3320-1) forms with current permitted effluent limitations to all permittees. The team receives, reviews and tracks monthly self-reported data (DMRs) received from permitted facilities throughout the State. The Database and Administration Team receives and initially reviews the data utilizing the Violation Review Action Criteria (VRAC) located in the Enforcement Guidelines (Appendix 6-A, Part III). If the facility exceeds VRAC for administrative requirements (such as failure to self-report), the Database and Administration Team has the authority to take informal enforcement action which includes warning letters and verbal contact. The Database and Administration Team staff will take the appropriate action to address the noncompliance within thirty (30) days of becoming aware of the violation. If the alleged violator does not respond, if the response is not adequate, or if the noncompliance is non-administrative in nature, the facility is referred to the Water Quality Team Leader for assignment and enforcement review by Water Quality Team staff.

A listing of job descriptions associated with all Regional and Central Office Texas Pollutant Discharge Elimination System (TPDES) compliance evaluation and monitoring activities is included in Appendix 7-A.

WATER QUALITY ENFORCEMENT AND LEGAL ACTION

Types of Agreed Orders

An agreed order ("AO") is a legally enforceable document which is issued by the Commission. It is "agreed" because the entity under enforcement agrees to the terms of the order and to the penalty assessed. Most agreed orders include a penalty (reference the Enforcement Guidelines located in Appendix 6-A, Part VI) as well as technical requirements ("TRs") which specify how and when the entity must achieve compliance.

There are two types of agreed orders ("AO") prepared by Water Quality Enforcement, and/or Litigation Support Division ("LSD"). These documents, and the criteria for determining when each type will be used, are described below:

1660-styled Order

A 1660-styled Order is the informal term for a TNRCC agreed enforcement order which includes provisions authorized or required by Senate Bill (SB) 1660. Briefly, these include:

- A statement that the occurrence of any violation is in dispute and that the entry of the agreed order shall not constitute an admission by the respondent of any violation alleged in the agreed order;
- A statement that the agreed order is not intended to become a part of the respondent's compliance history; and
- A statement that the agreed administrative order, issued by the Commission, shall not be admissible against the respondent in a civil proceeding, unless the proceeding is brought by the attorney general's office to: (1) enforce the terms of the order; or (2)

pursue violations of the Water Code or Health and Safety Code.

Findings Order

A Findings Order differs from the 1660-styled Order in that it contains findings of fact and conclusions of law and becomes part of a respondent's compliance history. A Findings Order will be used when any of the following four criteria is satisfied:

- 1) The violation is a gross deviation from a standard of conduct common in a given industry defined as:
 - a) indifference to legal duty;
 - b) a manifestly smaller amount of watchfulness than the circumstance(s) require of an entity acting with ordinary prudence; or
 - c) absence of management practices designed to ensure compliance;
- 2) Violations involving a significant emission or discharge of contaminants to the environment in the last five years. A significant water quality discharge is:
 - a. twice the permitted limits for conventional pollutants; or
 - b. 50% above permitted limits for toxic pollutants;
- 3) Three repeated enforcement actions [notice of violation (NOV), corrective action directive (CAD), order, judgment] over the prior five year period for the same violation or a substantial history of the same violation entity-wide; or
- 4) Regardless of specific violations, an entity has demonstrated a pattern of disregard for environmental laws. This is a judgment to be made by the EC, investigator, legal staff and appropriate managers.

Types of Enforcement Processes

TNRCC will take timely and appropriate enforcement actions to implement TPDES. In cases where TNRCC cannot meet the criteria in EPA's oversight guidance, TNRCC agrees to notify EPA 45 days prior to the facility appearing on the Exceptions List. EPA will then initiate formal enforcement action in order to ensure that the violations are addressed in a timely and appropriate manner. EPA may also initiate enforcement action at the request of the TNRCC. During semi-annual audits of the TPDES program EPA will assess the frequency with which TNRCC meets timely and appropriate criteria (this includes assessment of adequate penalties). The results of these semi-annual audits will be used to evaluate the program against the criteria set forth in 40 CFR 123.63 (3) and 123.64 (4).

There are two processes used by the TNRCC in pursuing enforcement actions, the expedited order process and the Executive Director's Preliminary Report and Petition ("EDPRP") process. The EDPRP process is similar to the complaint process utilized by the EPA.

Expedited Order Process

Most often, the Water Quality Team will try to expedite the enforcement process by using the expedited order process. The purpose of the expedited order is to achieve a settlement with the violator by minimizing negotiations and avoiding the legal costs and time delays which can be incurred as the result of litigation. Both 1660-styled and Findings Orders can be used in the expedited process. If the alleged violator does not agree to the terms of the expedited order within 60 days of the date the order is mailed to the alleged violator, the case is referred to the LSD and the EDPRP process is begun. The Examples of the AO in either the 1660-styled or Findings format may be found in the Enforcement Guidelines (Appendix 6-A, Part VII).

EDPRP Process

This process may be used when the screening process indicates that timely settlement is unlikely (settlement will likely take longer than 60 days) and/or the action may be contested. A case is considered contested when the entity and the agency do not reach an agreement on the terms of an order. The document used to process cases which are contested (or the agency feels are likely to end up as contested cases) is called an Executive Director's Preliminary Report and Petition, or EDPRP. The EDPRP is part of the agency's administrative enforcement action as described in 30 Texas Administrative Code, Chapter 70. It is a petition filed by the Executive Director which seeks an enforcement order against a respondent. Both the 1660-styled and Findings Orders can be used in the EDPR process. The EDPRP includes a brief statement of the nature of the violation, the statute or statutes violated, the facts relied upon by the Executive Director in concluding that a violation has occurred, a recommendation that an administrative penalty be assessed, the amount of the recommended penalty, and an analysis of the factors required in the relevant statute to be considered by the Commission in determining the amount of the penalty. Also included are TRs which address outstanding noncompliances, including a specific date to complete the required action. The agency is required to develop an EDPRP prior to referring a matter to the State Office of Administrative Hearings (SOAH). (An EDPRP could lead to an agreed order but only if the entity under enforcement decides to settle with the agency and agree to an order prior to a contested case hearing.) Therefore if it is determined that no agreement can be reached, the staff attorney will request the Commission to remand the case at an agenda meeting immediately following the "no agreement" decision. The staff attorney will direct SOAH to set the matter for hearing within 60 days. The first meeting for the hearing is essentially a roll call to identify and determine party status of the individuals involved in the hearing. The actual hearing will normally be scheduled 60 to 120 days later, depending upon the complexity of the case.

Another Commission policy regarding proposed administrative penalties is the discretionary use of Supplemental Environmental Projects (SEPs) in AOs. A SEP is a project that prevents pollution, reduces the amount of pollution reaching the environment, enhances the quality of the environment, or contributes to public awareness of environmental matters. An alleged violator in an enforcement action may negotiate an agreement to perform a SEP in return for a deferral of a portion of the proposed administrative penalty. If the Director of the LSD approves the inclusion of a particular SEP in an AO, it will be presented to the Commission for consideration. Potential SEPs include such diverse projects as:

- (1) Pollution prevention and/or reduction projects;
- (2) Environmental restoration projects that go beyond repair to the enhancement of the environment in the vicinity of the violating facility;
- (3) Technical assistance to other Commission regulated entities who are faced with economic and/or technological hardships;
- (4) Environmental education and/or engineering assistance to members of the regulated community or the public;
- (5) Projects to fund public works for a neighboring municipality or county that will benefit the environment in a way that is beyond ordinary compliance with the law; and
- (6) Projects to clean up illegal municipal and industrial solid waste dumps.

The LSD is charged with the responsibility to review and approve SEPs. If an alleged violator is interested in negotiating a SEP, the Commission has developed a SEP Proposal guideline to assist an alleged violator in preparing a SEP for consideration. The Enforcement Guidelines (Appendix 6-A, Part VI) contains more detailed information regarding SEPs.

Default Order

If an alleged violator does not respond to the notice of an EDPRP, the Executive Director will seek an order issued by default. Any answer in response to an EDPRP must be filed with the chief clerk's office no later than 20 days after the date on which the EDPRP is received as required under 30 Texas Administrative Code § 70.105.

Referral to the Office of the Attorney General

The agency may refer cases to the Office of the Attorney General (AG) who will, in turn, file a lawsuit against the entity on behalf of the State of Texas. The AG will file a petition in District Court of the appropriate county, depending upon the venue provisions set forth in the applicable statute.

It is possible for the AG to reach an agreement with the entity without having the case heard in court. This settlement must be approved by the District Court Judge. The agreement is formalized in a document called an Agreed Final Judgment. Other results that the AG may obtain are: a temporary injunction; a restraining order; or a final judgment (if there is no agreement). The criteria for TNRCC referral of a case to the AG are as follow:

1. Need for immediate action (temporary restraining order or injunction) to protect public health, safety, or the environment;
2. Need for judgment to enforce compliance with existing administrative enforcement order;
3. Bankruptcy considerations, with the potential need for representation in bankruptcy court;
4. Egregiousness of violations and impacts, where availability of higher statutory civil penalties should be considered;

5. Other strategic considerations, based upon the judgement of TNRCC management and AG advice; or
6. When required by law.

The statutory citation which specifies when a case shall be referred to the AG is as follows:

(Upon delegation of NPDES permit authority)

Texas Water Code, § 7.105 (Subchapter A. General Provisions; Enforcement; Civil Suit):

“(b) The commission, through the executive director, shall refer a matter to the attorney general’s office for enforcement through civil suit if a person:

- (1) is alleged to be making or to have made an unauthorized discharge of waste into or adjacent to the waters in the state at a new point of discharge without a permit in violation of state law;
- (2) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 26 occurring at the same wastewater management system or other point of discharge within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;
- (3) is alleged to be operating a new solid waste facility, as defined in Section 361.003, Health and Safety Code, without a permit in violation of state law;
- (4) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 361, Health and Safety Code, occurring at the same facility within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;
- (5) is alleged to be constructing or operating a facility at a new plant site without a permit required by Chapter 382, Health and Safety Code, in violation of state law; or

(6) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 382, Health and Safety Code, for violations occurring at the same plant site within the two years immediately preceding the date of the first alleged violation currently under investigation at that site.”

Texas Water Code, § 7.106 (relating to Resolution Through Administrative Order) states:

“The attorney general’s office and the executive director may agree to resolve any violation, before or after referral, by an administrative order issued under Subchapter C by the commission with the approval of the attorney general.”

Additionally, the decision on whether or not to refer a case to the AG for noncompliance with the terms of a Commission Order should be evaluated on a case-by-case basis. Other administrative actions may be utilized, such as seeking the issuance of another Commission Order.

Criminal Prosecution

Finally, certain cases are developed for criminal prosecution by the Special Investigations Team in LSD. This team works through the Texas Environmental Enforcement Task Force which is comprised of several state and federal agencies. A parallel process may be appropriate to support both the civil and administrative relief necessary to protect human health, the environment, or other significant concern while continuing the criminal investigation or prosecution. Special Investigations will inform the Enforcement Division if it is necessary to develop a “no penalty” order due to a pending criminal case.

The Enforcement Process

When formal enforcement action is initiated, the desire of the enforcement program staff is to complete the

action and to return the alleged violator (or respondent) to compliance in a timely and appropriate manner. To accomplish compliance in a timely and appropriate manner, all formal enforcement actions will be processed in accordance with the case prioritization policy included in the Enforcement Guidelines (Appendix 6-A, Part VI). The case prioritization policy specifies that AOs and EDPRPs be mailed to the alleged violator within thirty (30) to one hundred twenty (120) days of the decision to initiate action by the Enforcement Screening Committee (“ESC”). This process includes mailing a proposed AO or EDPRP to the respondent in accordance with the case prioritization guidelines and to obtain the respondent’s consent to an AO within 60 days of mail out. AOs and EDPRPs will specify a penalty and timetable for compliance, and will require, if necessary, certain actions to achieve compliance with Commission rules or permits. It should be noted that all entities receiving a proposed AO with penalties have the opportunity to present evidence in an effort to prove that they are unable to pay all or part of the penalty. When a claim of financial inability to pay is made, Water Quality Team staff (or LSD staff, if assigned) will forward a list of financial disclosure documents to the alleged violator. Once properly completed and submitted by the respondent (within 30 days), the financial disclosure documents will be reviewed by the agency’s Financial Assurance Section to determine if the claim is valid. Another Commission policy regarding proposed administrative penalties is the discretionary use of Supplemental Environmental Projects (SEPs) in AOs. A SEP is a project that prevents pollution, reduces the amount of pollution reaching the environment, enhances the quality of the environment, or contributes to public awareness of environmental matters. The Enforcement Guidelines (Appendix 6-A, Part VI) contains more detailed information regarding SEPs.

To the extent that state judgements or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, may commence separate action for penalties. EPA’s definition of an adequate penalty is collection of at least the economic benefit of noncompliance.

The failure to comply with the requirements of an AO is independently enforceable without having to prove the original violation. If a respondent fails to meet the requirements of an AO, the Commission may enter into another formal enforcement action through the expedited or EDPRP process, or pursue an Agreed Final Judgment (AFJ) or Criminal Action. The Commission recognizes that the option of formal enforcement action for the purpose of EPA's enforcement guidance must result in an AO issued by the Commission which may contain administrative and/or deferred penalties, or an AFJ, or Criminal Action.

For the purpose of Commission tracking of administrative procedures or tracking of actions through the Office of the Attorney General, the formal enforcement process is initiated through ESC. The ESC is a weekly multimedia committee meeting with managers from every media within the Enforcement Division present. In addition, the Regional inspector, assigned Water Quality Team staff and a representative from the LSD are present. Violations are screened within 15 days after the Water Quality Team receives the enforcement referral or within 15 days of discovering SNC. The action determined to be appropriate may be formal administrative enforcement action, judicial action, or a Commission emergency order. It is important to remember that coordination must be maintained between the Water Quality Team, LSD and Regional Office staff regardless of which strategy of enforcement is pursued, or when a case is escalated from one enforcement strategy to another in order to achieve compliance. The objective of the screening process is:

1. to review the documentation for the citations and verify that it is sufficient;
2. to determine the appropriate type of enforcement action to pursue such as a 1660-styled Order or Findings Order through the expedited process, referral to the LSD to develop enforcement through the EDPRP process, referral to the Office of the Attorney General, or to pursue a criminal action; and
3. to determine the case priority (see the Enforcement Guidelines (Appendix 6-A, Part VI) for the prioritization policy).

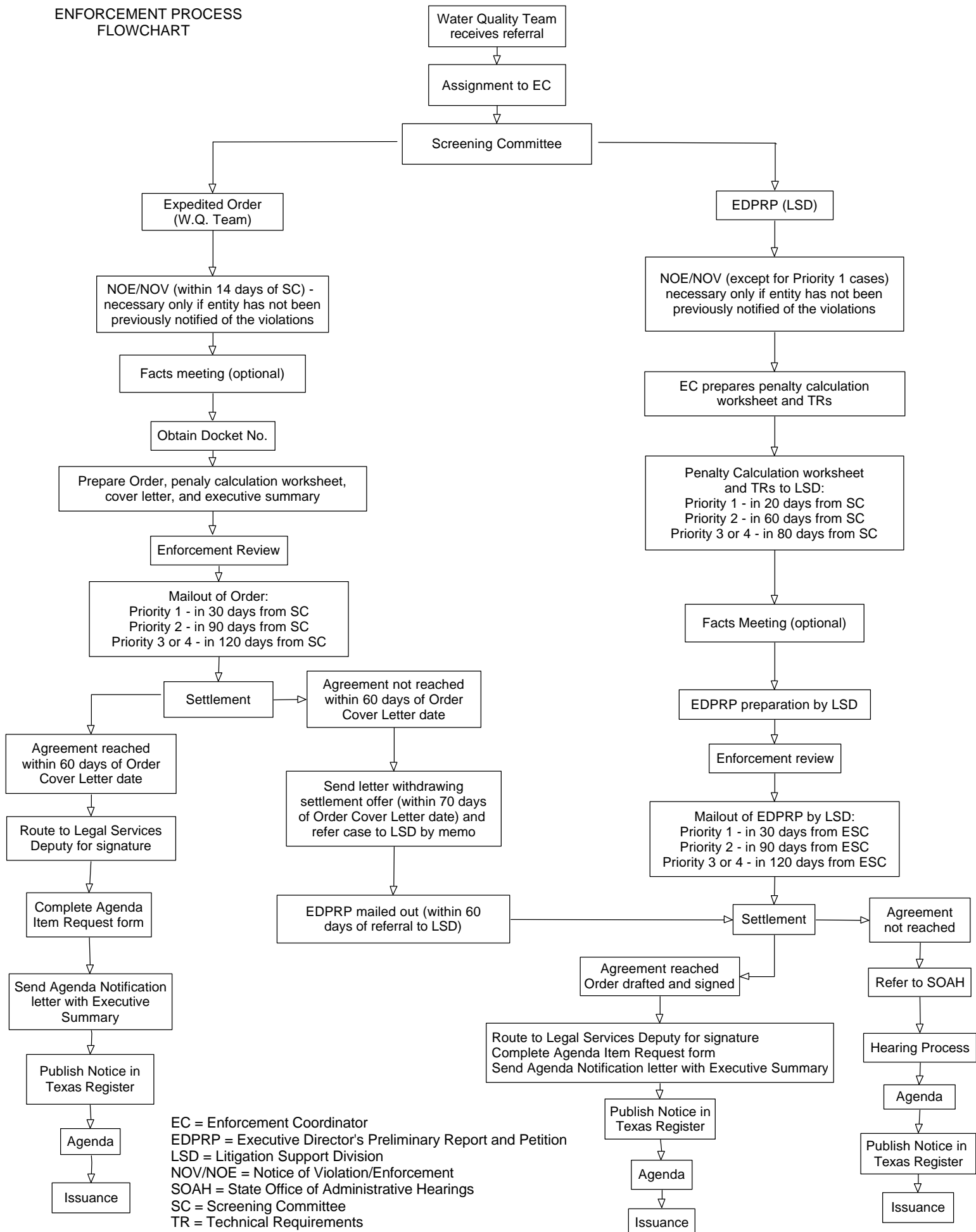
The Commission Enforcement Guidelines (Appendix 6-A) is the primary document that governs how enforcement procedures, both formal and informal, will be implemented. Enforcement program staff may utilize one or more of the following strategies available and discussed at length in the guidelines:

- Write a monitoring /warning letter outlining the identified deficiencies/violations and requesting compliance. If necessary, escalate after monitoring.
- Initiate formal enforcement action and write a Notice of Violation/Notice of Enforcement (NOV) letter outlining deficiencies/violations if a NOV has not already been written or verbally given. Develop and recommend issuance of an AO, using the expedited or EDPRP enforcement process, requiring certain corrective or remedial action, and/or assessing administrative penalties. If the EDPRP process is initiated, the case will be referred to the LSD, which will coordinate with the Water Quality Team to develop the EDPRP and subsequent AO. The Water Quality Team staff (enforcement coordinator) will prepare the penalty computation worksheet and technical requirements for the EDPRP and the expedited process.
- Submit criminal violations to the LSD's, Special Investigations Team, for further investigation and action.
- Initiate a referral request to the Office of the Attorney General recommending civil judicial action in state court to obtain a court ordered temporary injunction, permanent injunction, or AFJ which will restrain the violator from continuing the action that caused the violations, enforce previous orders issued by the Commission, and may include additional penalties and/or injunctive relief.
- Initiate additional or further judicial or administrative action.

The formal enforcement process is described in detail in the Enforcement Guidelines (Appendix 6-A, Part II).

The flow chart below describes the different steps in the formal enforcement process from the initiation of the action to the issuance of an AO. The Commissioners have the final approval authority for the issuance of an AO and vote whether to approve the AO during an agenda meeting. Assuming the AO is approved by the Commissioners, the Commission's Chairman signs the AO and the Chief Clerk's office mails a certified copy to the respondent. The mail out date is considered the issuance date. Once issued, the AO requirements are monitored for compliance. The AO specifies penalty payment information, a time frame for compliance and may specify actions (technical requirements referred to as TRs) necessary for achieving compliance.

ENFORCEMENT PROCESS FLOWCHART



Time frames for the expedited formal enforcement process include (longest time period):

Action	Time Frame
ESC	Day 0.
Mail out of the proposed AO	Within 120 days of ESC, depending on the case priority assigned at ESC.
Settlement	Within 60 days of the date the proposed AO is mailed to the respondent. A 45-day extension may be approved if the respondent proposes a Supplemental Environmental Project or requests a financial review due to a financial inability to pay the proposed administrative penalty. (180 days after ESC)
Settlement achieved - the signed proposed AO is then published in the Texas Register for public comment	Approximately 10 days from receipt of the AO to publication in Texas Register. (190 days after ESC)
Publish Notice in Texas Register	30-day comment. (220 days after ESC)
Set AO for Agenda	Approximately 21 days. (241 days after ESC)
AO approved at Agenda	The issued AO is generally mailed to the respondent by the TNRCC's Chief Clerk's Office with 14 days of the agenda. (255 days after ESC)

Time frames for the EDPRP process include:

Action	Time Frame
ESC	Day 0.
Penalty Calculation Worksheet and TSS to LSD :	Within 80 days of ESC, depending on the case priority assigned at ESC.
Mail Out of EDPR by LSD	Within 120 days of ESC, depending on the case priority.
Settlement achieved - the signed proposed AO is then published in the Texas Register for public comment	Approximately 10 days from receipt of the AO to publication in Texas Register. (190 days after ESC)
Publish Notice in Texas Register	30-day comment period. (220 days after ESC)
Set AO for Agenda	Approximately 21 days. (241 days after ESC)

AO approved at Agenda	The issued AO is generally mailed to the respondent by the TNRCC's Chief Clerk's Office with 14 days of the agenda. (255 days after ESC).
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Time frames for the referral of cases to the Office of the Attorney General ("OAG"):

Action	Time Frame
ESC	Day 0.
Referral to the OAG	Within 20 days of ESC.
OAG will file petition in district court	Within 60 days of the receipt of the referral. (80 days after ESC)

The Commission has several programs that allow for the identification of noncompliances and the initiation of informal enforcement and formal enforcement actions. Many of these programs are tracked through PCS by the Database and Administration Team. Following is a description of each of these programs (each program is discussed in greater detail in the Enforcement Guidelines, Part II located in Appendix 6-A):

- Violation Review Action Criteria (VRAC) and SNC Violations** - The Database and Administration Team will notify the Water Quality Team of facilities which exceed VRAC or are SNC. The Water Quality Team will prescreen the violations and recommend appropriate enforcement action, as necessary. The enforcement response should reflect the nature and severity of the violation, and, unless there is supportable justification, the response should be the initiation of a formal enforcement action for SNC violations or a return to compliance by the permittee within one quarter from the date that the SNC violation is first reported on the Quarterly Noncompliance Report (QNCR) generated by the Database and Administration Team. Formal Enforcement Action will be taken before the violation appears on the second QNCR, within sixty (60) days of receipt of the first QNCR. If the Water Quality Team does not act within this time period, the EPA Region VI Office may take formal Enforcement Action implementing the Federal Override justifications as outlined in the

Memorandum of Agreement. In cases where TNRCC cannot meet the criteria in EPA's oversight guidance, TNRCC agrees to notify EPA 45 days prior to the facility appearing on the Exceptions List. EPA will then initiate formal enforcement action in order to ensure that the violations are addressed in a timely and appropriate manner. During semi-annual audits of the TPDES program EPA will assess the frequency with which TNRCC meets timely and appropriate criteria (this includes assessment of adequate penalties). The results of these semi-annual audits will be used to evaluate the program against the criteria set forth in 40 CFR 123.63(3) and 123.63(4). In the rare circumstances where formal enforcement action is not taken, the Water Quality Team will have a written record that clearly justifies why an alternative course of action was considered more appropriate. An Exceptions List describing why formal enforcement action was not taken will be prepared and submitted to EPA by the fifteenth (15th) calendar day of the month the QNCR is due to headquarters.

- **Violations Documented During Regional Office Inspections** - Regional Offices will conduct scheduled compliance inspections for TPDES permittees to monitor compliance with applicable requirements for wastewater treatment plants, pretreatment standards, sewage sludge management facilities, concentrated animal feed operations and storm water discharges. Most noncompliances noted during inspections will be handled through implementation of an informal corrective action plan at the Regional level. Development of the plan will occur through Regional meetings with noncompliant entities and/or Regional NOV letters. If SNC violations or other serious and/or continuing violations are identified during an inspection, the Regional Office will initiate formal enforcement action.
- **Unpermitted discharges, unauthorized bypasses and unauthorized sanitary sewer**

overflows - Any unpermitted discharge or unauthorized bypass which causes or has the potential to cause a water quality problem or health problem is defined as SNC by the EPA. Other unpermitted discharges, unauthorized bypasses and unauthorized sanitary sewer overflows from wastewater collection systems may be referred by the Regional Offices to the Enforcement Division for the initiation of formal enforcement action, if warranted. The Sanitary sewer overflows will be handled as required by Texas Water Code Section 26.049(a). Accordingly, the Water Quality Team may not initiate any enforcement action related to sanitary sewer overflows or threatened overflows that: (1) is stricter than the national policy for sewer overflows; and (2) seeks compliance in a manner that exceeds the minimum requirements of the policy. Until the Sanitary Sewer Overflow National Policy is approved, sanitary sewer overflows which occur during periods of dry weather will be acted upon as violations of Texas Water Code Section 26.121 which states that no person may discharge sewage, municipal waste, recreational waste agricultural waste or industrial waste into or adjacent to any water in the state unless authorized by rule, permit or order issued by the commission.

- **Failure to Renew an Individual Permit** - The Applications Team located in the Water Quality Division will send a renewal notice to permittees one year prior to their permit expiration date. On a monthly basis, the Applications Team will identify permittees who have failed to submit a renewal application. The Applications Team staff will research the Record Services file and/or contact the appropriate Regional Office or facility representative to verify that the facility is still in operation. If the Applications Team can verify that the facility is operating without a permit and formal enforcement action is needed to achieve compliance, the case will be referred to the Water Quality Team management in the Enforcement Division

by memo from the Applications Team management.

- **Biomonitoring Program (Failure to Conduct WET/Violations of WET Limits)** - Any failure of a toxicity test conducted to fulfill the requirements of a WET limit is a permit violation. The Commission bases the criteria for considering formal enforcement action against a permittee on the number of test failures that occur in a twelve month period. The Toxicity Evaluation Team of the Water Quality Division will send the permittee a warning letter when a permittee fails two (2) tests (for a particular species) within 12 consecutive months and the Toxicity Evaluation Team will attempt to contact the permittee twice to discuss and resolve the violations.

The Water Quality Team will consider pursuing formal enforcement action if a permittee fails four (4) tests (for a particular species) in a period of twelve (12) consecutive months. At this point a permittee is also required to implement a Toxicity Reduction Evaluation (TRE).

- **Sewage Sludge Reports** - Domestic wastewater treatment plants are required to submit sludge management information included in their discharge monitoring reports (DMRs) on an annual basis. The DMRs will be processed in accordance with the procedures outlined in paragraph G of the Procedures for PCS Section of this chapter entitled “Self-Reporting Data/Discharge Monitoring Reports (DMRs)”. The semi-annual and annual sludge reports required by 40 CFR 123.45 will be included in the QNCR prepared by the Database and Administration Team. If a facility fails to submit the required report, the Database and Administration Team will refer the permittee to the Water Quality Team for appropriate enforcement action.

The Sludge and Transporter Review Team will review submitted annual reports and notify the entity of any noted violations. If the violations are not corrected in a timely or satisfactory manner, the Sludge and Transporter Review Team will refer the entity to the Water Quality Team for appropriate enforcement action.

- **Failure to Renew a Sludge Permit or Registration** - On an annual basis, the Sludge and Transporter Review Team will send the Water Quality Team management and the Regional Offices a list of sludge beneficial use operators who have let their permit or registration expire. The Sludge and Transporter Review Team will research the Record Services file and/or contact the appropriate Regional Office or representative for the facility to verify that the sludge beneficial use site is still in operation. If the Sludge and Transporter Review Team can verify that the facility is operating without a required permit, formal enforcement action will automatically be initiated. If the facility is operating without a required registration, a letter will be sent directing the facility to submit an application for registration within 30 days. If the facility fails to submit an application for registration, formal enforcement action will be pursued.
- **Pretreatment Enforcement Program** - Based on pretreatment audits conducted by the Central Office Pretreatment Team, or reviews of annual pretreatment reports prepared by the POTW, the Pretreatment Team will notify the Water Quality Team within thirty (30) days of finding SNC or VRAC exceedances. The audit or annual report will also be forwarded to the Water Quality Team for appropriate action within 30 days of noting SNC or VRAC exceedances. Semi-annual reports from categorical and noncategorical Significant Industrial

Users (SIUs) in areas outside the jurisdiction of the approved pretreatment programs will be sent to the Database and Administration Team. If these reports are not received in accordance with 40 CFR 403.12, the Database and Administration Team will refer the SIUs to the Water Quality Team within 60 days of the report due date.

If a Regional Office inspector identifies and documents violations through the pretreatment compliance inspection (PCI) or inspections of categorical SIUs which warrant formal enforcement action, the Regional Office will submit a request for the initiation of formal enforcement to the Water Quality Team.

In addition to direct enforcement authority over POTWs with approved pretreatment programs, the Commission may intervene and initiate formal enforcement action when a POTW, with an approved pretreatment program, fails to take appropriate action against a violating industrial user.

B. Enforcement Evaluation

Enforcement evaluation is the core of the entire compliance enforcement system. All basic enforcement action decisions and recommendations are initiated from this evaluation. Several sources and types of information, outlined below, are utilized and reviewed to determine entity compliance with program and permit requirements, rules and statutes.

- Regional inspection reports and requests for initiation of formal enforcement action provide information about violations discovered during facility inspections.
- Effluent quality violations are identified through a review of self-reported information contained in the Permit Compliance System (PCS).

- Noncompliance reports, unauthorized discharge reports, pretreatment reports (including Pretreatment Audits), biomonitoring and toxicity testing reports (including Toxicity Identification Evaluation/Toxicity Reduction Evaluation (TRI/TRE) studies), annual sludge reports, storm water monitoring and any other special reports required by the TPDES permit are evaluated for compliance.
- Pretreatment audits and reports will be given individual evaluation for compliance by the Central Office Pretreatment Team.

If a facility exceeds VRAC for administrative requirements (such as failure to self-report), the Database and Administration Team has the authority to take informal enforcement action which includes warning letters and verbal contact. The Database and Administration Team staff will take the appropriate action to address the noncompliance within thirty (30) days of becoming aware of the violation. If the alleged violator does not respond, if the response is not adequate, or if the noncompliance is non-administrative in nature, the facility is referred to the Water Quality Team Leader for assignment and enforcement review by the Water Quality Team staff. The Database and Administration Team will refer all SNC violations to the Water Quality Team. Additionally, the Pretreatment Team, the Sludge and Transporter Review Team, the Toxicity Evaluation Team and the Regional Offices may refer a facility to the Water Quality Team for evaluation or request the initiation of formal enforcement.

During this review, pertinent submissions and other associated documentation are evaluated and appropriate action is recommended to the ESC for consideration for initiation of formal enforcement action. The Enforcement Response Guide, located in Appendix 6-A, Part III, of the Enforcement Guidelines, will be utilized in determining the appropriate response or action. Also, during this review, the Water Quality Team will contact the appropriate Commission

staff, as well as any other affected entities, such as state, county, city, and/or federal agencies, as necessary.

The Water Quality staff have the primary responsibility for gathering and drafting the information necessary for the formal administrative enforcement action. If the selected strategy is to recommend issuance of an AO through the expedited process, the Water Quality Team's responsibility includes drafting the proposed AO and participating in negotiations with the alleged violator and reaching a settlement within 60 days of mailing out the AO. If the respondent does not settle within 60 days, the case is referred to the LSD and further enforcement is pursued through the EDPRP process.

For each formal enforcement action, Water Quality Team, Regional, and Litigation Support staff must be committed to exceptionally well planned and on-going coordination. It is the responsibility of the LSD staff attorney, the Water Quality Team, and the Regional staff to:

- Pursue the appropriate level of informal/formal enforcement action selected by the ESC. If formal action is the chosen mechanism then determine with the Screening Committee's assistance whether the expedited or EDPRP process should be utilized;
- Develop the proper presentation for the case;
- Ensure that a satisfactory resolution to the case is achieved through monitoring the on-going corrective/remedial action implemented by the alleged violator pursuant to the AO; and
- Complete and ultimately close the enforcement action.

Regular meetings and/or telephone conferences between the litigation, enforcement and field staff should be conducted to ensure this coordination is on-going.

C. Compliance Review

The purpose for reviewing a permittee's compliance status is to insure that all pertinent information is submitted in a timely manner and to verify that permit and/or AO requirements are met within the specified time frames. The Water Quality Team staff is responsible for confirming that proper action is being taken on all compliance matters for the particular facility under review. The basic precept to be followed is to ensure that complete and appropriate action is taken such that compliance with all permit requirements can be confirmed. Facilities under enforcement will be reviewed according to the Compliance Review Checklist detailed in Part V of the Enforcement Guidelines. **D. Investigations**

If it is determined that further investigation is needed during the course of the ESC meeting prior to initiating formal enforcement action, or, is needed as an adjunct to such actions, certain authorities, such as Regional staff, may be utilized to collect such information (subject to workload restrictions at the Regional level).

E. Case Information Tracking

Enforcement actions are entered into PCS upon completion of the action as described in the *Compliance Procedures Manual*, Section II.E. of this Chapter.

REGIONAL OFFICE INSPECTIONS

The Commission will use risk-based inspection targeting strategies as outlined in Sections A-D of this subchapter to select TPDES entities for scheduled compliance inspections. Factors that will be taken into account include: watershed impairment, severe and/or chronic effluent noncompliance, prior compliance history and time since the last scheduled compliance inspection. The Commission will also consider EPA inspection guidance, the watershed strategy and the annual Office of Enforcement and Compliance Assurance MOA guidance when targeting TPDES entities for inspections.

A. Compliance Inspections for the Domestic and Industrial Wastewater Program

The Commission will conduct inspections for domestic and industrial wastewater treatment plants (WWTP) in order to monitor compliance with permit requirements. The inspections will include compliance evaluation inspections (CEI), compliance sampling inspections (CSI), compliance biomonitoring inspections (CBIs), pretreatment compliance inspections (PCIs) and follow-up inspections as needed. Performance audit inspections (PAIs) and sludge compliance inspections will be incorporated into the CEI, CSI or CBI.

1. CEIs, CSIs and CBIs

During a CEI or CSI, operation and maintenance procedures will be evaluated, monitoring data will be reviewed, and effluent samples may be collected for comparison with permit limits. The distinction between a CEI and CSI will be based on the type of sampling conducted by the Regional inspector. A CEI will be either a non-sampling inspection or a sampling inspection in which sample types other than those required for permittee self-monitoring are collected (e.g., effluent grab sample for a publicly-owned treatment works (POTW) major).

A CSI will be a sampling inspection in which sample types consistent with permittee self-monitoring requirements are collected (e.g., effluent composite sample for a POTW major). For a selected number of facilities, a sample will be taken for biomonitoring analysis as part of a CSI. When biomonitoring sampling is conducted as part of a CSI, the inspection will be coded as a compliance biomonitoring inspection (CBI).

A performance audit inspection (PAI) will be conducted as part of the CEI, CSI or CBI for a WWTP if compliance factors indicate that such a review is necessary. When a PAI is done, the inspector will review the permittee's self-monitoring procedures. This review will include an evaluation of the permittee's procedures for sample collection, flow measurement, laboratory analyses, quality assurance practices and record keeping. In addition to inspections of on-site laboratories by Regional inspectors, some commercial laboratories that provide analytical services for wastewater permittees will be evaluated by the Quality Assurance Specialist from the TNRCC Laboratory in Houston.

Sludge compliance inspections will also be conducted as part of the CEI, CSI or CBI for a WWTP. During a scheduled compliance inspection for a WWTP, the Regional inspector will evaluate compliance with sewage sludge use and disposal practices regulated under the permit for the WWTP.

The Commission will use the following risk-based inspection targeting strategy to select domestic and industrial wastewater facilities for inspection. The Commission's strategy includes risk factors, targeted watersheds and a neutral inspection component. The neutral inspection component considers the amount of time that has elapsed since a CEI, CSI, or CBI

was last conducted at a facility. The projected number of wastewater facilities to be inspected each year under this strategy will be determined prior to the beginning of the fiscal year.

- (a) Mandatory Inspections: Certain facilities will be pre-selected for a required compliance inspection prior to the beginning of the fiscal year. These inspections will be referred to as mandatory inspections. Mandatory inspections will be determined using 2 methods.

- (1) Watershed Model

- (A) Priority Segments (Watershed Impairment/Effluent Noncompliance):

A mandatory compliance inspection will be required for severely or chronically noncompliant domestic and industrial wastewater facilities which discharge to water bodies that are primarily impacted by point source discharges (priority segments). An exception will be allowed if sufficient justification is provided by the Regional Office for not requiring a mandatory inspection for a particular facility. A facility may be deleted from the mandatory inspection list if the facility was inspected in the previous fiscal year and corrective action has been completed or is underway, or if the facility is no longer in service or will be taken out of service in the near future. Priority segments will be selected from the 303(d) list which is based on information in the 305(b) report. For the purposes of inspection targeting, severe and chronic effluent noncompliance will be defined as:

- (I) Severe Noncompliance: Exceeding the permit limit by 40%

or more for a conventional pollutant parameter for 4 of the most recent 12 months of self-reported data or exceeding the permit limit by 20% or more for a parameter for a heavy metal or toxin for 4 of the most recent 12 months of self-reported data.

- (ii) Chronic Noncompliance: Any violation of a permit limit for a conventional pollutant parameter or a parameter for a heavy metal or toxin for 6 of the most recent 12 months of self-reported data, regardless of the level of deviation from the permit limit.

- (B) Other Designated Watersheds: Mandatory inspections may also be required for domestic and industrial wastewater facilities in other designated watersheds within the state based on Commission management decisions.

- (2) Majors: 40 CFR §123.26(e)(5) requires that State NPDES compliance evaluation programs shall have procedures and ability for inspecting the facilities of all major dischargers where applicable at least annually. TNRCC has the procedures and ability for inspecting the facilities of all major dischargers and all Class I sludge management facilities where applicable at least annually. TNRCC will inspect 100% of the majors and Class I sludge facilities on an annual basis, or a universe of majors and minors agreed upon annually. EPA and TNRCC are committed to a process for targeting inspections according to the priorities established by TNRCC to protect the waters of Texas. TNRCC will develop an annual plan which

establishes these priorities, lists the major and minor dischargers to be inspected under the plan and demonstrates that the plan is substantially equivalent to the annual inspection of all major dischargers and Class I sludge management facilities where applicable. EPA is committed to review TNRCC's annual inspection priority plan and upon the determination that it is substantially equivalent to the inspection of the facilities of all major dischargers and all Class I sludge management facilities, approve it. The inspection priority plan will be negotiated annually in the timeframes and under the procedures specified for the TNRCC/EPA multimedia, multi-year enforcement MOU, and when approved by EPA, the inspection priority plan will become part of the enforcement MOU. In the first year under this Memorandum of Agreement, should EPA and TNRCC not reach agreement on TNRCC's proposed annual inspection priority plan within 90 days of its submittal, TNRCC agrees to perform inspections in accordance with the currently existing inspection plan approved under the 106 grant for the remainder of TNRCC's fiscal year. In subsequent years, should EPA fail to act on TNRCC's proposed annual inspection priority plan within 90 days of its submittal, TNRCC agrees to perform inspections in accordance with the last approved inspection priority plan until the end of that fiscal year. In any year, if EPA disapproves the proposed annual inspection plan, it shall notify TNRCC of specific reasons the plan does not, in EPA's opinion, describe the substantial equivalent of the inspection of all major dischargers and Class I sludge management facilities. If no agreement is reached on EPA's objection(s) by December 31st, the disagreement will be referred to the

Regional Administrator and the Executive Director of the TNRCC. In all years, if there is no agreement on an annual inspection priority plan by the beginning of the following fiscal year, TNRCC agrees to inspect all major dischargers and all Class I sludge management facilities where applicable. The procedures that the Commission will use for conducting inspections are described in Section E of this subchapter. In terms of resources, approximately nineteen (19) FTEs would be needed to inspect all of the five hundred and sixty (560) operational majors currently identified in Texas. Chapter 7 of the Program Description shows that the Commission will have thirty (39) FTEs available for domestic and industrial wastewater inspections: twenty seven (27) existing FTEs plus twelve (12) new FTEs. These FTEs will provide sufficient ability for inspecting all majors at least annually as required by 40 CFR §123.26(e)(5). The number of majors to be inspected will be negotiated annually as described in the MOA. Major facilities selected for inspection will include those identified under the watershed model as described in Section A.1.(a)(1) above plus an additional number of majors selected using the Regional Office's knowledge of a facility's compliance history and time since the last CEI, CSI, or CBI (neutral inspection component of the targeting strategy).

- (b) Discretionary Inspections: In addition to mandatory inspections, Regional Offices will be required to do a certain number of discretionary wastewater inspections each fiscal year. Specific facilities to be inspected as discretionary inspections will not be pre-determined prior to the beginning of the fiscal year. Regional Offices will select these facilities as the year progresses using the following information.

- (1) Self-reported Noncompliance: Regional Offices will be provided with a list of severely or chronically noncompliant domestic and industrial minors which discharge to water bodies other than priority segments. Severe and chronic effluent noncompliance will be determined from self-reporting data using the method specified in Section A.1.(a)(1) of this subchapter.

- (2) Regional Knowledge of Compliance History: Regional Offices will consider their knowledge of a wastewater facility's compliance history based on prior inspections, complaints, and formal enforcement actions.
- (3) Time Since Last Scheduled Inspection: Regional Offices will have database information indicating the date of the last CEI, CSI or CBI for each wastewater facility in their region. Facilities which have not been inspected within the last 2 fiscal years and are not scheduled for mandatory inspections in the upcoming fiscal year will be evaluated as candidates for discretionary inspections.

2. Pretreatment Inspections

In addition to pretreatment audits which will be conducted by the Central Office Pretreatment Team, Regional Offices will conduct pretreatment compliance inspections (PCIs) each fiscal year for a subset of approved pretreatment programs. The number of PCIs to be conducted will be negotiated annually as described in the MOA. Approved pretreatment programs will be selected for PCIs based on prior pretreatment audit findings, time since the last PCI and/or audit, and any known compliance problems at a WWTP that may be pretreatment related.

Inspections of industrial users (IUs) for POTWs with approved pretreatment programs will be conducted routinely by the Pretreatment Team during a pretreatment audit and on an as-needed basis by the Regional Offices as part of a PCI. IU inspection(s) during a PCI will be based on whether the PCI findings indicate a problem or concern which would warrant a visit to the IU, such as problematic discharges from an IU into the WWTP or inadequate pretreatment monitoring or enforcement by the permittee.

Regional Offices will also inspect as necessary categorical IUs of POTWs without approved pretreatment programs. These categorical IUs will be selected for inspection based on type of IU, size of IU, and any known compliance problems at a WWTP that may be pretreatment related.

B. Compliance Inspections for the Sewage Sludge Management Program

40 CFR §123.26(e)(5) requires that State NPDES compliance evaluation programs shall have procedures and ability for inspecting the facilities of all Class I sludge management facilities (as defined in 40 CFR 501.2) where applicable at least annually. The procedures that the Commission will use for conducting inspections are described in Section E of this subchapter. In terms of resources, approximately three (3) FTEs would be needed to inspect all of the estimated one hundred (100) Class I sludge management facilities in Texas. Chapter 7 of the Program Description shows that the Commission will have four (4) FTEs available for sewage sludge inspections: three (3) existing FTEs plus one (1) new FTE. These FTEs will provide sufficient ability for inspecting all Class I sludge management facilities at least annually as required by 40 CFR §123.26(e)(5). The number of Class I sludge management facilities to be inspected will be negotiated annually as described in the MOA.

During a scheduled compliance inspection for a WWTP, the Regional inspector will evaluate compliance with sewage sludge use and disposal practices regulated under the permit for the WWTP. Under this inspection procedure, the Commission will inspect Class I sludge management facilities that are associated with a WWTP which is targeted for a mandatory inspection based on the criteria described in Section A.1.(a) of this subchapter. This criteria takes into account severe or chronic effluent noncompliance in priority watersheds, location

of a facility in other designated watersheds, and required inspections of majors. It also includes a neutral inspection component which considers the amount of time that has elapsed since a CEI, CSI, or CBI was last conducted at a facility. Since the majority of Class I sludge management facilities are majors, the inspection coverage for Class I sludge management facilities will be comparable to the inspection coverage for majors.

C. Compliance Inspections for the Storm Water Program

The Commission will inspect a subset of entities with TPDES general permits and TPDES MS4 permits for storm water. A risk-based inspection targeting strategy will be developed to select storm water permittees for inspection. The projected number of storm water inspections to be conducted each year will be determined prior to the beginning of the fiscal year.

D. Compliance Inspections for the Concentrated Animal Feeding Operations (CAFO) Program

The Commission will inspect TPDES authorized CAFOs. CAFOs will be selected for inspection based on (1) compliance history as indicated by past inspection findings, complaints and formal enforcement actions, (2) time since the last scheduled compliance inspection, and (3) specific agency initiatives, as applicable. The projected number of inspections to be conducted for CAFOs each year will be determined prior to the beginning of the fiscal year.

E. Procedures and Report Forms for Compliance Inspections

1. Training Program for Water Quality Inspectors

The Commission will provide a training program for basic and senior inspectors. This will cover initial and on-going training to ensure that inspectors have necessary expertise. The requirements of the training program are included in Appendix 6-B.

2. Compliance Inspection Procedures

NPDES guidelines for compliance inspections will be considered in establishing inspection procedures.

Procedures for conducting wastewater inspections are specified in the TNRCC Wastewater Inspection Manual (Appendix 6-B). The manual includes information pertaining to preparing for an inspection, entry into a facility, safety procedures, conducting an inspection, sampling, chain-of-custody/sample shipping procedures, and report preparation. In addition, guidelines have been developed by the Commission for conducting expedited CEIs, CSIs or CBIs for domestic and industrial WWTPs using compliance indicators to determine the level of review to be done during the inspection (Appendix 6-B). The guidelines for expedited CEIs, CSIs or CBIs for WWTPs allow the Commission to maximize use of inspection resources.

A manual for the CAFO inspection program is currently under development. The anticipated completion date for the CAFO inspection manual is May 1, 1998. A manual may also be developed for the sewage sludge inspection program to consolidate in a single format program guidelines that have been issued. For PCIs and storm water inspections, the Commission will consider EPA guidelines and manuals in establishing procedures for conducting these inspections. After conducting PCIs and storm water inspections for a period of time, the

Commission may elect to develop its own manuals for these programs. The Commission will coordinate with EPA as appropriate on development of new manuals and will provide EPA with copies upon completion of any new manuals.

3. Inspection Notification Policy

Regional inspectors will provide notification to regulated entities of the Region's intent to conduct a compliance inspection prior to all routine compliance inspections, except as indicated in the paragraph below. Ideally, this notification will occur one to two weeks prior to the inspection date. Notice to the facility and scheduling will not have to be in writing; a documented telephone conversation with a responsible company/city official will be sufficient.

The policy for advance notification will not apply to the following situations:

- Situations where there is evidence or reason to believe that the facility is intentionally violating laws or regulations, has been a repeat offender, or other strong reason exists to not notify facility management in advance
- Enforcement follow-ups
- Complaint investigations (unless to expedite prompt access)
- Other special projects as predetermined

Decisions on when advance notification will not occur will be made by the Regional management in concert with their inspection staff.

The goal of the notification policy will be to increase the efficiency of the inspection process. Through this increased efficiency, the Commission will be able to increase the number of inspections over time and the availability of staff resources to address true environmental

threats. Notification in advance of routine compliance inspections will ensure that proper personnel will be available at the time of inspection. Time may be wasted, return visits may be required or the inspector may not be able to obtain the information needed to complete the inspection if appropriate facility management are unavailable. While some minor compliance matters may be corrected with advance notification, most serious violations cannot be easily remedied within the time frame specified for advance notification.

If EPA notifies the Commission that EPA plans to conduct an inspection of a facility, the Commission will not inform the facility of the upcoming EPA inspection without EPA's prior approval. This will preserve EPA's right to conduct unannounced inspections.

4. Compliance Inspection Forms

The results of compliance inspections will be reported using established report forms (Appendix 6-C). The forms include the EPA 3560 form, the TNRCC Compliance Review Inspection Report (CEI, CSI or CBI) for domestic and industrial wastewater facilities, the TNRCC Wastewater Compliance Check Report for follow-up inspections or brief compliance checks, and the TNRCC Compliance Review Inspection Report for CAFOs. Questions pertaining to a PAI or sludge compliance inspection are incorporated into the TNRCC Compliance Review Inspection Report for a CEI, CSI or CBI of a WWTP. In addition, Regional staff may use a laboratory checklist (Appendix 6-C) to assist them in evaluating laboratory procedures during a PAI.

For PCIs and storm water inspections, the Commission will use inspection forms currently in use by EPA Region 6. After conducting these inspections for a period of time, the

Commission may elect to modify the EPA Region 6 forms or develop alternate forms. Any substantive modifications or new inspection forms for PCIs or storm water inspections will be provided to EPA for review and comment.

5. Modifications as Necessary

The procedures for conducting inspections and formats for inspection reports may be modified as necessary to meet program needs. If the Commission elects to use an alternate form in place of the EPA-3560 form, the Commission will ensure that the alternate form meets the tracking needs for PCS and will provide the alternate form to EPA for review and approval.

6. Pretreatment Audits

Pretreatment audits will be conducted by the Central Office Pretreatment Team. Since pretreatment audits will not be done by the Regional Offices, specifics about pretreatment audits are not covered in this section. Information about pretreatment audits is contained in Chapter 4 of the Program Description.

F. Letter of Findings for Scheduled Compliance Inspections

The Regional Offices will notify each entity in writing of the findings of a scheduled compliance inspection using suggested formats for correspondence (Appendix 6-D).

G. Regional Enforcement Action to Resolve Noncompliances

Regional Offices will undertake appropriate action to address violations and/or substantial deficiencies noted during compliance inspections. Violations for which formal enforcement action is not needed will be handled through implementation of an informal corrective action

plan at the Regional level. Development of the plan will occur through Regional meetings with noncompliant entities and/or Regional NOV letters. If SNC violations or other serious and/or continuing violations are identified during an inspection, the Regional Office will initiate formal enforcement action.

Follow-up inspections will be conducted on an as-needed basis to monitor implementation of corrective action plans and/or to provide additional documentation for enforcement. The frequency of follow-up inspections will be subject to workload demands at the Regional level.

H. Completion Time Frame for Compliance Inspection Reports

Reports for scheduled compliance inspections and follow-up inspections will be completed and submitted to the Central Office within sixty (60) days of the date of the inspection. The signature date on the report will be considered the submittal date. The required time frame for submittal of these reports may be modified as necessary to meet program needs.

I. Entity Responses

If violation(s) are noted during a scheduled compliance inspection, the Regional Office's letter to the entity will either set a specific compliance due date for the violation(s) or request that the entity submit a plan and schedule for corrective action, unless the entity is already under a corrective action schedule or a formal enforcement action is being initiated. When an entity's response is received, the Regional Office will review the response for adequacy and determine if further action is necessary. The Regional Office will then forward the response with a code sheet to the Central Office.

J. Providing Compliance Inspection Information to EPA

The Commission will provide EPA with copies of compliance inspection reports and inspection letters for major and minor WWTPs that are selected for mandatory inspection under the criteria specified in Section A.1.(a) of this subchapter. The inspection reports/letters will be sent to EPA within 35 days of completion of the documents.

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EPA will also have access to compliance inspection data through the PCS database. Original inspection reports/letters/responses will be sent to the Central Office for filing in the Commission's Record Services files. Regional Offices will maintain copies of inspection reports/letters/responses in their Regional files. When conducting state program audits, EPA will have access to Record Services files to review agency program material, including inspection reports/letters/responses.

K. Review and Tracking of Compliance Inspection Reports

Regional Office compliance inspection reports with code sheets will be reviewed and signed by the inspector and Regional management prior to submittal to the Central Office of Field Operations Division (FOD). The Central Office of FOD will screen the code sheet to verify specific data and access information for FOD tracking purposes. The inspection report and code sheet will then be forwarded to the Enforcement Division for PCS data entry and any necessary enforcement review as described in the Procedures for PCS Maintenance subchapter of this chapter. After processing of the inspection report is completed, the inspection report will be sent to Record Services for placement in the entity's official agency file.

L. Review and Tracking of Entity Responses

After review of an entity's response at the Regional level, the Regional Office will send the response along with a code sheet to the Central Office of FOD. The Central Office of FOD will screen the code sheet to verify specific data and access information for FOD tracking purposes. The response and code sheet will then be forwarded to the Enforcement Division for any necessary tracking and review. The Enforcement Division will process entity responses in the same manner as inspection reports as described in the Procedures for PCS Maintenance subchapter of this chapter. After processing of the entity response is completed, the response will be sent to Record Services for placement in the entity's official agency file.

M. Complaint Investigations

The Commission will conduct water quality complaint investigations in accordance with the Commission's complaints prioritization system. Procedures for processing complaints are specified in the Complaints Handling Mini-Manual as amended by Interoffice Memorandum dated January 11, 1995 (Appendix 6-E). If a written water quality complaint is received, the Commission will provide quarterly notifications to parties of the complaint regarding the status of the complaint until the time of final disposition of the complaint, as specified in Texas Water Code §5.177. The Complaints Handling Mini-Manual will be updated to reflect this quarterly reporting activity for written water quality complaints. The Complaints Coordinator in each Regional Office will be responsible for prioritizing complaints, maintaining the Regional Office's complaints log and coordinating complaint investigations.

PERMIT COMPLIANCE SYSTEM DATABASE DESCRIPTION

The Permit Compliance System (PCS) is a computer database that is used to track information on TPDES permits and the pretreatment program. The Database and Administration Team will enter all Water Enforcement National Data Base (WENDB) data elements in PCS, except for the general descriptive information, permit facility, outfall schedule data, parameter limits data, permit event data and evidentiary hearing data which will be updated and maintained by the Applications Team in the Wastewater Permits Section, and receive reports from this database. The following data will be maintained for use on PCS:

Table 6.1 - PCS Data Types

DATA TYPE NAME	DESCRIPTION
PERMIT FACILITY DATA	General descriptive information on each permitted facility such as its name, address, classification and design flow rate. Permit facility data elements occur once only in a facility's permit file; data elements of other types may occur more than once. Because it contains the basic information regarding a permitted facility, permit facility data is the one data type that belongs to all families of logically related data types. Data is entered within five (5) working days of receipt of permit application and permit issuance.
OUTFALL SCHEDULE DATA	Detailed information describing each outfall within a permitted facility and the discharge monitoring requirements associated with each, such as the latitude and longitude coordinate location for each outfall, effluent waste type(s), treatment type(s), and limit start and end dates-initial, interim, or final. Outfall schedule level data elements typically occur as many times in each permit file as there are outfalls within the facility. Outfall schedule data belongs to a family of logically related data types that includes permit facility data, parameter limits data, and measurement violation data. Data is entered within thirty (30) days of permit issuance.

PARAMETER LIMITS DATA	<p>Detailed information specifying the monitoring requirements associated with each outfall within a permitted facility such as the monitoring location, the parameter to be monitored, the required frequency of analysis, the units in which the measurements are expressed, and the quantity and concentration limits for each parameter. Parameter limits level data elements typically occur as often for each outfall as there are parameters to be monitored at the outfall. Parameter limits data belongs to a family of logically related data types that includes permit facility data, pipe schedule data, and measurement violation data. Data is entered within thirty (30) days of permit issuance or issuance of enforcement actions.</p>
COMPLIANCE SCHEDULE DATA	<p>Information related to a schedule of milestone events that a permitted facility must accomplish in order to upgrade the quality of its effluent discharge when that has been established as a condition of the facility's being granted a permit. Compliance schedule data tracks the scheduled versus achieved dates for each milestone event and belongs to a logically related family of data types that includes permit facility data and compliance schedule violation data. Data is entered within thirty (30) days of permit issuance, within (10) working days of schedule establishment in an enforcement order, or within five (5) days of notification of completion.</p>
COMPLIANCE SCHEDULE VIOLATION DATA	<p>Information related to violations of the compliance schedule where applicable to a facility, whether from failure to meet a milestone date or failure to submit required report data. Compliance violation data belongs to the family of logically related data types that includes permit facility data and compliance schedule data. Data is system generated.</p>

ENFORCEMENT ACTION DATA	Data related to enforcement actions that have been taken in response to violations of effluent parameter limits, non-receipt of DMRs, or failure to meet compliance schedule milestones, including the event(s) in violation and date(s) of occurrence, the type of enforcement action(s) and the date(s) they were taken, the current status of each action, etc. Enforcement action data and permit facility data make up a distinct family of logically related data types. Data is entered within ten (10) working days of the enforcement action.
ENFORCEMENT ACTION KEY DATA	Information that describes the specific violation/deficiency that caused the initiation of formal enforcement action. Data is entered within ten (10) working days of the enforcement action.
SINGLE EVENT VIOLATION DATA	Information describing violations not related to effluent limits or compliance schedules, i.e., unauthorized bypasses or discharges, violations documented during inspections, unpermitted discharges, etc. Data is entered within five (5) working days of notification of the violation event.
PRETREATMENT SUMMARY DATA	Information included in the pretreatment summary data describes the status of an approved pretreatment program. It discusses in an annual report form, program implementation, enforcement activities, significant industrial users (SIUs) information, SIU significant noncompliance information, sludge, influent, and effluent analysis, a pretreatment performance summary and a program update. Data is entered within thirty (30) working days of receipt of the pretreatment annual report.

INSPECTION DATA	Information describing inspections that have been performed at a permitted facility, including the date of the inspection, the type of inspection, whether the inspection was state, federal or joint performed, and other relevant comments. Inspection data and permit facility data make up a distinct family of logically related data types. Data is entered within ten (10) working days of receipt of the inspection report.
PRETREATMENT COMPLIANCE INSPECTION (PCI) AND PRETREATMENT AUDIT DATA	Information about pretreatment compliance inspections and pretreatment audits that have been performed at a permitted facility, including the date of the inspection or audit, the type of evaluation and by whom it was performed, and relevant comments, deficiencies, and/or violations on program implementation and operation. Pretreatment data make up a distinct family of logically related data within the inspection data category. Data is entered within ten (10) working days of receipt of the audit or inspection report.
PERMIT EVENT DATA	Information tracking the events relating to the issuance of a permit from initial receipt of the application for a permit through actual permit issuance. Permit event data and permit facility data together make up a distinct family of logically related data types. Data is entered within five (5) working days of date of receipt of permit application and permit issuance.
EVIDENTIARY HEARING DATA	Data related to evidentiary hearings held to appeal or negotiate limits, compliance schedule requirements or other permit conditions. Evidentiary hearing data and permit facility data make up a distinct family of logically related data types. Data is entered within five (5) working days of the hearing date.

DISCHARGE MONITORING REPORT (DMR) DATA	Specific data received from the permittee on a monthly basis, reporting, in terms of numerical criteria, the quality of effluent being discharged from the facility. The data submitted includes those parameters required to be analyzed by the Commission, and stated in the permit to ensure that treatment at the facility is consistent with design criteria which in turn ensures the effluent discharged complies with the minimum limits necessary to meet water quality standards designated for the receiving waters into which the facility discharges. Review of DMR data includes a review of system generated violation information. Data is entered within ten (10) days of receipt of the reports.
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The Permit Compliance System tracks all the data elements comprising the WENDB. By tracking these data elements, PCS is able to generate a number of important reports, such as the Quarterly Noncompliance Report (QNCR) (Appendix 6-F). It is the duty of the Database and Administration Team staff and the Applications Team staff to coordinate the TPDES administrative and data entry functions to ensure that all data is entered into PCS accurately and timely. The PCS Data Base Administrator is responsible for coordinating QA/QC procedures, and acts as liaison between the EPA and the TNRCC in matters relating to operation and maintenance of PCS. The Compliance Procedures Manual, Appendix 6-G, provides a detailed description of the procedures, including Quality Control procedures for each data type, which will be used by the Database and Administration Team staff to monitor compliance with TPDES permits.

Permit data entered into PCS will consist of general permit information (information which normally does not change), permit effluent data, pretreatment data, biomonitoring data (if the permittee is required to biomonitor), sludge data, and storm water data. General permit information consists of such things as permit number, name of permit holder, address and location, telephone number, river basin, stream segment, county code, and so forth. Permit effluent data consists of permitted effluent conditions. Pretreatment data consists of the

pretreatment compliance inspections (PCIs), pretreatment audits, and annual reports/pretreatment performance summaries (PPS). Biomonitoring data consists of the type of species used, the type of test performed, and whether the permittee passed or failed the test. Sludge data consists of heavy metals levels, pathogen alternative and vector attraction reduction. Storm water data consists of permitted effluent conditions.

Database and Administration Team and Applications Team staff members will prepare data for entry into PCS by filling out data entry code sheets. It is the responsibility of the administrative support staff to code or screen for accurate data and submit the code sheets to the data entry staff in a timely manner. It is the responsibility of the data entry staff to enter the data into PCS correctly and quickly, communicating with the administrative support staff or originator of the data when errors occur. The data entry staff will also work with individual administrative support staff and technical staff to develop required reports from PCS which will help the staff in their work and in their efforts to keep PCS accurate.

PROCEDURES FOR PCS MAINTENANCE

A. Permit Data

1. Permit Application Data

The Wastewater Permits Section, Applications Team receives permit applications for new, renewed or amended permits, including technical data from applicants, and reviews them for administrative completeness within 10 working days of receipt. When an application is declared administratively complete, a permit writer is assigned and a detailed technical review of the application commences. The date the application is declared administratively complete and the name of the permit writer assigned to the permit application will be entered into PCS by the Applications Team.

Upon completion of the technical review, the permit writer will prepare a draft permit. Once the draft permit has been completed and has received all necessary approvals, it is routed back to the Applications Team and sent to the Office of the Chief Clerk (OCC) for Public Notice/Public Hearing.

The Applications Team is responsible for entering the WENDB data elements in PCS for the general information about the facility, including the facility name, address, and type of ownership, and information about the permit application, including the date the application is declared administratively complete and the name of the permit writer assigned to the permit application. The Applications Team is also responsible for entering the WENDB data elements for the Permit Event Data, including the date the draft permit is sent to the OCC, as well as other information related to a Public Hearing, such as the Administrative Law Judge assigned to the case and the date of hearing. The Database and Administration Team is responsible for entering other facility level data related to the DMR, such as the DMR mailing address, telephone number and signatory authority.

After a permit (renewed, amended, or new) is issued by Commission or the Executive Director, the

OCC will forward a copy of the signed permit to the Database and Administration Team and Applications Team staff. The permit conditions will be entered into the PCS by the Applications Team within 30 days of issuance. Permits are routed from the OCC to the Database and Administration and Applications Team staff after signature. The OCC staff also insures that copies of the permit will be forwarded to the following:

- One (1) copy to the Commission Record Services permanent file.
- One (1) copy to the appropriate Commission Regional Office for use by inspectors.
- One (1) copy to the EPA, Water Quality Management Division, and one (1) copy to EPA, Compliance Assurance and Enforcement Division on a monthly basis.
- One (1) copy to the Water Quality Division, either to the Wastewater Permits Section or the Agriculture Section.

After receipt of the permit, the designated Database and Administration Applications Team staff codes the permit requirements and forwards code sheet to data entry staff for entry into PCS.

2. Requests for Hearing/Motions for Rehearing

The OCC's will forward information regarding requests for hearings concerning permit requirements and/or permit renewal or permit issuances to the Applications Team for entry into PCS. The Database and Administration Team staff will be notified by OCC will notify the Applications Team of motions for rehearing which have been granted by the Commission. The Applications Team will ensure existing permit conditions will remain in effect and be tracked in the PCS. No new permit conditions will apply until further Commission action.

B. Enforcement Data

All enforcement actions will be entered into PCS by the Database and Administration Team staff, including phone calls for incomplete/deficient DMRs, warning letters, requests for delinquent schedule reports, enforcement meetings, and formal actions.

AOs (1660 or Findings format) and Agreed Final Judgments (AFJs) are legally enforceable instruments which may be issued to a permittee who is not meeting the terms and/or conditions of its permit, statute and/or rules. Copies of AOs (1660 or Findings format) and AFJs will be forwarded by the Water Quality Team staff to the designated Database and Administration Team staff who will review the documents, code the milestone dates, and route the code sheet to the data entry staff. The data entry staff will then update PCS to reflect these changes and return all documents with an updated PCS printout to the Database and Administration Team staff who will review the changes for accuracy and update the Violation Summary Log to reflect the AO requirements. When a Quality Control (QC) check has been completed, the documents will be forwarded to the permittee's Record Services file.

The material received as a result of the requirements of an AO (1660 or Findings format) or AFJ will be received initially by the Water Quality staff for review to insure accuracy and completeness of the information. The designated Water Quality staff will complete code sheets and forward to the designated Database and Administration Team staff for entry into PCS. The Water Quality staff will also advise the Database and Administration Team if further action is necessary. The Database and Administration Team staff will make a note in the Violation Summary Log and in PCS that the document was received. The material will then be forwarded to the permittee's Record Services file by the Water Quality staff.

The Water Quality staff will also notify the Database and Administration Team staff within five (5) days of termination of an AO (1660 or Findings format). The Database and Administration Team staff will then update PCS and the Violation Summary Log to reflect this action.

C. Inspection Data

Inspections are conducted by Regional Office inspectors located in the Commission's Field Operations Division (FOD). The purpose of these inspections is to evaluate the compliance status of regulated entities. Inspection data contains information related to the inspections at a facility, including the inspector, date of inspection, type of inspection, etc.

After conducting an inspection, the inspector is responsible for completing an inspection report and code sheet which is forwarded to the Central Office of FOD where the code sheet is screened to verify certain data and access information for FOD tracking purposes. The inspection report and code sheet is then forwarded to the Database and Administration Team staff.

The inspection report will be reviewed by the Database and Administration Team staff and all noted violations will be processed in accordance with the Enforcement Guidelines (Appendix 6-A). A copy of the code sheet will be forwarded to the data entry staff for PCS entry of required inspection data. Data entry will be completed within ten (10) working days of receipt of the inspection report.

The Database and Administration Team staff will then forward the inspection report and code sheet to the Water Quality Team, Water and Multimedia Section, in the Enforcement Division for review and/or action if:

- (1) the inspection report is for a permittee who is under Central Office administrative enforcement

action,

- (2) the inspection report includes an enforcement action request (EAR) from the Regional Office;
or
- (3) any of the violations cited require a formal enforcement action under SNC or the Enforcement Guidelines.

Following review of the inspection report, the Water Quality Team staff will send the inspection report to Record Services for placement in the permittee's official agency file.

For inspection reports which do not require transmittal to the Water Quality Team, the Database and Administration Team staff will send the inspection report and code sheet directly to Record Services for placement in the permittee's official agency file unless the Regional Office has designated on the code sheet that the inspection report should be forwarded to other Commission staff for review and/or action prior to being sent to Record Services.

D. Pretreatment Audits and Annual Report Data

1. Pretreatment Audits

The Central Office Pretreatment Program Team staff will conduct pretreatment audits for permittees with approved pretreatment programs to evaluate compliance with pretreatment requirements. After the audit is conducted, the Pretreatment Program Team staff will complete the necessary code sheet and forward the audit report and code sheet to the Database and Administration Team staff for entry into PCS. If violations are noted that are SNC and/or exceed VRAC or if the audit report is for a permittee who is under formal enforcement action, the audit report will be forwarded to the designated Water Quality Team staff in the Enforcement Division for review and/or action. The designated Water Quality Team staff will notify the Database and Administration Team staff of any intended

administrative enforcement action by submitting a code sheet for entry into PCS and the Violation Summary Log. The Water Quality Team staff will then route the pretreatment audit report to the permittee's Record Services file.

For audit reports which do not require transmittal to the Water Quality Team, the Pretreatment Team staff will send the audit report directly to Records Services for placement in the permittee's official agency file unless the pretreatment program staff has designated that the audit report should be forwarded to other Commission staff for review and/or action prior to being sent to Record Services.

Upon receiving a request from EPA, pretreatment audit reports will be forwarded from the Pretreatment Program Team to EPA within 90 days of completion of the reports.

2. Annual Report for Pretreatment

Annual pretreatment reports are prepared by POTWs that have approved pretreatment programs and submitted to the Central Office Pretreatment Program Team staff for review. The Pretreatment Program Team staff will complete the appropriate code sheet and forward the annual pretreatment report and the code sheet to the Database and Administration Team staff for entry into PCS. If violations are noted that are SNC and/or exceed VRAC, or if the audit report is for a permittee who is under formal enforcement action the annual pretreatment report will then be forwarded to Water Quality Team, Water and Multimedia Section, in the Enforcement Division for review and/or action. The designated Water Quality Team staff will determine if formal administrative enforcement action will be initiated and will notify the Database and Administration Team staff by code sheet for entry into PCS and the Violation Summary Log. The Water Quality Team staff will then route the original

report to the permittee's Record Services file.

The PCS system is not capable of performing a review of the pretreatment data for generation of the SNC Report, except for the non-submittal of annual reports. For SNC violations other than report non-submittal, the designated Water Quality Team staff must submit the appropriate code sheet to the Database and Administration Team staff for entry into the Violation Summary Log and PCS, allowing the facility to be identified on the QNCR as well as for initiation of formal administrative enforcement action.

For annual pretreatment reports which do not require transmittal to the Water Quality Team, the Database and Administration Team staff will send the annual report directly to Record Services for placement in the permittee's official agency file unless the Pretreatment Program Team staff has designated that the annual report should be forwarded to other Commission staff for review and/or action prior to being sent to Record Services.

E. Sludge Management Data

Domestic WWTPs will be required to submit sludge management information to the Commission on an annual basis. This information will be used to track sludge from its generation at the WWTP through to final disposal. The reporting requirements will include at least the following information:

- (1) Results of tests performed for pollutants as appropriate for the permittee's land application practices;
- (2) The frequency of monitoring which applies to the permittee;
- (3) Toxicity Characteristic Leaching Procedure (TCLP) results;

- (4) Identity of hauler(s) and Commission transporter number;
- (5) PCB concentration in sludge in mg/kg;
- (6) Date(s) of sludge disposal;
- (7) Owner of the sludge disposal site(s);
- (8) Commission registration number of the sludge disposal site, if applicable;
- (9) Amount of sludge disposed in dry weight (lbs/acre) and dry weight tons at each site;
- (10) The concentration (mg/kg) in the sludge of applicable pollutants as well as the applicable pollutant concentration criteria (mg/kg) or the applicable pollutant loading rate limit (lbs/acre) if it exceeds 90% of the limit;
- (11) Level of pathogen reduction achieved (Class A or Class B);
- (12) Alternative used and description of how the pathogen reduction requirements are met;
- (13) Vector attraction reduction alternative used;
- (14) Annual sludge production in dry tons/year;
- (15) Amount of sludge land applied in dry tons/year;
- (16) The certification statement as applicable to the permittee's sludge treatment activities; and
- (17) When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate, the permittee shall report the location, number of acres in each site on which the bulk sewage sludge was applied, the date and time the bulk sewage was applied to each site, the cumulative amount of each pollutant (pounds/acre) in the bulk sewage sludge applied to each site, and the amount of sewage sludge (dry tons) applied to each site.

Sludge management data will be entered into PCS for the data fields established by EPA. DMRs containing sludge data will be processed in accordance with the procedures outlined below in Section G, entitled *Self-reporting Data/Discharge Monitoring Reports (DMRs)*.

Each person holding a registration or permit to treat, process or dispose of sewage sludge or water treatment sludge, including all persons holding a permit allowing the treatment, discharge, or disposal of sewage sludge or water treatment sludge, is required to file a report by February 19th of each year with the Commission indicating the weight of dry solids disposed of throughout the year.

F. Compliance Schedules

Compliance schedules are a sequence of remedial actions to be accomplished by the permittee. Each schedule will culminate in a specific requirement to attain an operational level and achieve final compliance with all applicable permit limits and/or pretreatment requirements. PCS is used to track the scheduled events and the actual achievement dates. Compliance schedule violations are automatically determined from this information.

1. Permits

The designated Database and Administration Team staff will review permits to determine if a schedule of compliance exists. When a schedule of compliance is included in the permit, the Database and Administration Team staff will submit the appropriate code sheet to the data entry staff for entry into PCS. The Database and Administration Team staff will also document the reports required and associated due dates in the individual file. The compliance schedule data will be entered within thirty (30) days of issuance.

When a compliance schedule report or notification of actions taken is received from a permittee under a permit initiated compliance schedule, the Database and Administration Team staff enters the date received into the individual file and PCS, within five (5) working days, and reviews the submittal to determine if it meets the requirements and intent of the schedule. Should the submittal not meet the

compliance schedule requirements, the Database and Administration Team staff will address the issue through a letter to the permittee.

If the facility is under formal enforcement action, the report will be forwarded to the Water Quality Team staff for review and action. Should the submittal not meet the compliance schedule requirements, correspondence addressing the violation will be coordinated with the Water Quality Team staff. The original submittal will then be forwarded to the permittee's Record Services file.

The Database and Administration Team staff will review the compliance schedules for each of the assigned facilities at least once per month to determine if all actions have been completed and all reports have been submitted. Any reports or actions found to be delinquent by fourteen (14) days after the due date will be noted on the Violation Summary Log and will be addressed by the Database and Administration Team staff through a warning letter. Any reports or actions which are delinquent by more than thirty (30) days will be referred to the Water Quality Team in the Enforcement Division for appropriate action. The designated Water Quality Team staff will determine if formal administrative enforcement action should be initiated, complete the necessary code sheets and forward to the Database and Administration Team staff for entry into PCS and the Violation Summary Log.

2. Enforcement

All new and amended formal administrative enforcement actions will be forwarded by the Water Quality Team, Water and Multimedia Section, Enforcement Division, to the designated Database and Administration Team staff who reviews the document to determine if a schedule of compliance exists. PCS and the Violation Summary Log will then be updated in the same manner as described for permit

compliance schedules. Compliance schedule data will be entered within ten (10) working days of schedule establishment. Responses submitted pursuant to AOs (1660 or Findings format) or AFJs will be received by the designated Water Quality Team staff for review and approval, which should be completed within thirty (30) days of receipt of the response. Upon receipt, the Water Quality Team staff will complete the appropriate code sheet and forward it to the Database and Administration Team staff for entry of the receipt date into PCS and the Violation Summary Log. Data entry will be completed within five (5) working days of receipt of the response. If the response received is administratively or technically unsatisfactory, the Water Quality Team staff will draft the appropriate letter to the permittee and route it to the Database and Administration Team staff for noting on the Violation Summary Log and in PCS. The Water Quality Team staff will then forward the report to the permittee's Record Services file.

G. Self-Reporting Data/Discharge Monitoring Reports (DMRs)

Each permit designates the monitoring and reporting requirements specific to a facility. It specifies the effective dates of the limits, the parameters to be tested, the applicable limits for each parameter, and the frequency of analysis and sample type for monitoring.

This information is then summarized and submitted to the Commission on a pre-printed DMR form (EPA Form 3320-1), or an exact replica of the form if approved by the Commission. All permittees that are tracked in PCS (major, significant minor, and 92-500 minors) are required to submit their DMRs by the twentieth (20) day of the month following the monitoring period. An annual supply of pre-printed DMRs will be provided to the major, significant minor and 92-500 facilities two months prior to the permit expiration date.

The DMR data will be entered into PCS by the Database and Administration Team within 30 days of receipt of the DMR form. The DMRs are screened to determine if the DMRs were postmarked on or before the twentieth day of the month and have the proper signatures.

The Database and Administration Team staff will also apply VRAC to any violation(s) and prepare a warning letter if appropriate. If the violation(s) exceed VRAC or if the permittee fails to respond to the warning letter and more stringent action is needed, the permittee will be referred to the Water Quality Team for appropriate action. The violations are also noted in the Violation Summary Log.

After the DMR data is entered into PCS and after performing Quality Control of the DMR and PCS to ensure data has been accurately entered, the DMR is filed in the records management area of the Database and Administration Team.

The Database and Administration Team staff will prepare a letter to the permittee requesting the DMRs if the forms have not been received within thirty (30) days of due date.

If a permittee fails to submit a complete, acceptable DMR by the required date, the Database and Administration Team staff will refer the permittee to the Water Quality Team for appropriate enforcement action to resolve the violation.

H. Permit Noncompliance and Unauthorized Discharge Monitoring

1. Noncompliance Notification

- (a) Unless otherwise specified, any noncompliance which may endanger human health or safety, or the environment, must be reported to the Commission. Report of such information must

be provided orally or by facsimile transmission (FAX) to the Regional Office within twenty-four (24) hours of becoming aware of the noncompliance. A written submission of such information must also be provided to the Regional Office and to Water Quality Team, Water and Multimedia Section, Enforcement Division, within five (5) working days of becoming aware of the noncompliance. The written submission must contain the following:

- (i) a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment;
 - (ii) the period of noncompliance, including exact dates and times;
 - (iii) if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - (iv) the steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- (b) An unauthorized discharge is considered to be any discharge of wastewater into or adjacent to waters in the state at any location not permitted as an outfall or otherwise defined in the permit. Unauthorized discharges, unauthorized bypasses and unauthorized sanitary sewer overflows must be reported to the Commission in conformance with the procedures described in (a) above.
- (c) Notwithstanding any of the above, any effluent violation which deviates from the permitted effluent limitation by more than 40% must be reported in writing to the Regional Office and the Water Quality Team of the Enforcement Division within five (5) working days of becoming aware of the noncompliance.

- (d) Any noncompliance other than that specified in (a)-(c) above, or any required information not submitted or submitted incorrectly, must be reported as promptly as possible. This requirement means to report these types of noncompliance on the DMR.

2. Processing of Written and Verbal Noncompliance & Unauthorized Discharge Reports

Noncompliance information reported verbally or by fax within twenty-four (24) hours will be documented either by receipt of the fax itself or by completing an Unauthorized Discharge Notification Form or Telephone Memo to the File form or by entering the notification into a log or field notebook. For verbal notifications, the entity will be reminded to follow-up with a written notification.

Written 5-day noncompliance reports submitted by the regulated entity will be forwarded to the Database and Administration Team for processing. The reports will be entered in the Violation Summary Log and will be reviewed by the designated administrative support staff for VRAC and to ensure it contains all the required information. If VRAC is exceeded, the report is forwarded to the Water Quality Team, Water & Multimedia Section, Enforcement Division, for consideration of formal administrative enforcement action. If VRAC is not exceeded, the Database and Administration Team staff evaluate the current compliance status of the permittee and takes the appropriate action.

If the Database and Administration Team staff receive noncompliance reports on a facility currently under formal enforcement action, the report is reviewed, entered on the Violation Summary Log and routed to the assigned Water Quality Team staff (regardless of VRAC).

The Water Quality Team staff should be aware of new violations and any additional action planned by the Database and Administration Team staff and should concur with the intended action. When the

Water Quality Team staff completes an action, the Database and Administration Team will be notified so that the action can be entered into the Violation Summary Log and PCS.

I. Administrative File Review

The administrative file review is an important element of PCS maintenance. It is an annual review of the Record Services file and is often the only opportunity to review the overall compliance status of a permittee. It is also used as a quality control measure for reviewing all facility level data stored in PCS on each permittee to ensure the accuracy of data in the database. The administrative file review procedures are detailed in Appendix G, Compliance Procedures Manual, Section III.I of this chapter.

Any discrepancies will be addressed informally by the Database and Administration Team if the problem is of an administrative nature. If formal enforcement action by the Water Quality Team, Water & Multimedia Section, Enforcement Division, is pending, all correspondence initiated by the Database and Administration Team staff will be coordinated with the assigned Water Quality Team staff. If the violations meet or exceed VRAC, the file will be routed to the Water Quality Team for review and appropriate action. If any changes to PCS are needed as a result of the administrative file review, the Database and Administration Team staff will submit the appropriate code sheets to the data entry staff.

J. Quality Assurance and Quality Control Procedures

All entries into PCS will be controlled for accuracy. After all data is entered, it will be verified by another data entry staff member or the Administrative Support Staff. Any inaccuracies will be referred to the original data entry staff member for correction. The Database and Administration

Team will also use specific reports to perform Quality Assurance and Quality Control (QA/QC), including the Facility Report, Violation Report, Limit Summary, etc. A QA/QC document detailing all QA/QC procedures will be developed within six months of delegation.

K. Preparation of the Quarterly Noncompliance Report (QNCR)

The TNRCC is required to submit for major facilities a Quarterly Noncompliance Report (QNCR) consistent with the requirement and time frames outlined in the Guidance of Preparation of Quarterly and Semi-Annual Noncompliance Reports (See Appendix D). The QNCR is prepared using the DMR data and other compliance data that are entered into PCS. It is submitted to EPA no later than the tenth (10th) calendar day of the month the QNCR is due to headquarters.

Prior to a permittee appearing on the subsequent QNCR for the same instance of significant noncompliance, the permittee should either be in compliance or the TNRCC should have taken formal enforcement action (within 60 days of the first QNCR) to achieve permanent compliance. EPA will verify the accuracy and completeness of the QNCR at periodic intervals. In circumstances where formal enforcement action is not taken, the Water Quality Team will have a written record that clearly justifies why an alternative course of action was considered more appropriate. An Exceptions List describing why formal enforcement was not taken will be prepared and submitted to EPA by the fifteenth (15th) calendar day of the month the QNCR is due to headquarters.

L. Preparation of the Report for Enforcement and Compliance Assurance Priorities (RECAP)

The Report for Enforcement and Compliance Assurance Priorities (RECAP) is a statistical summary on the

number of major permittees with two or more violations of the same monthly average permit limitation within a six-month period, including violations reported on the QNCR. This report is prepared and submitted to EPA no later than the tenth (10th) calendar day of the month the first and third quarter QNCRs are due to headquarters.